

**MODEL STATUTE ON THE TAX COLLECTION PROCEDURES FOR
ACCOMMODATIONS INTERMEDIARIES**

Single/Dual Remittance

9/13/11 Draft

Accommodations Intermediaries Drafting Team

For Discussion Purposes Only

Single Remittance

This Model Statute imposes no tax liability and is only intended as an addition to an existing lodging tax act. It provides guidance relating to the proper tax collection and remittance responsibilities of accommodations intermediaries.

1. Definitions.—

(a) “Accommodations” means one or more individual sleeping rooms or suites for transient overnight lodging.

(a) “Accommodation” means a hotel room, a motel room, a residence, a cottage or similar transient lodging facility for occupancy for [less than thirty days ^{***alternative language***} thirty days or less.]

(b) “Accommodations provider” means any person or entity that furnishes accommodations for periods of [less than thirty days ***alternative language*** thirty days or less] to the general public for compensation. The term “furnishes” includes the sale of use or possession, or the sale of the right to use or possess.

(b) “Accommodations provider” means any person or entity that owns, operates or manages accommodations, and makes them available for sale, use or possession to the general public for compensation.

(c) “Accommodations intermediary” means any person or entity, other than an accommodations provider, that facilitates the sale of an accommodation and charges a room charge to the customer. For purposes of this definition, the term “facilitates the sale” includes brokering, coordinating, or in any other way arranging for the purchase of, or the right to use accommodations by a customer.

(c) “Accommodations intermediary” means any person or entity, other than an accommodations provider, that facilitates the sale, use or possession of an accommodation, and charges a room charge to the general public. For purposes of this definition, the term “facilitates the sale, use or possession” means brokering, coordinating or in any other way arranging for the purchase of the sale, use or possession of accommodations by the general public.

(d) “Accommodations fee” means the room charge less the discount room charge, if any, provided that for purposes of this Act the accommodations fee shall not be less than zero.

(d) “Accommodations fee” means any fee, by whatever name called, charged for facilitation the sale, use or possession of an accommodation, and is a portion of the room charge.

(e) “Room charge” means the full retail price charged to the customer for the use of the accommodations, including any accommodations fee before taxes.

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(f) “Discount room charge” means the amount charged by the accommodations provider to the accommodations intermediary for furnishing accommodation.

(g) “Unrelated accommodations intermediary” means an accommodations intermediary that is not part of a controlled group of corporations, as defined in I.R.C. Section 1563(a), that includes the accommodations provider.¹

(h)-A “travel package” consists of accommodations bundled with two or more separate components such as air transportation, car rental or similar items and charged to the customer for a single retail price.

¹ This provision will be either retained or deleted depending on whether the subcommittee chooses to retain the language in 3(a) (Safe Harbor). See also Dual Remittance, 1(g) (Definitions) and 3(b) (Safe Harbor).

2. Collection and Remittance.—

(a) An accommodations intermediary shall be responsible for the collection of tax imposed by [cite to applicable code section(s)] on the room charge and shall be required to separately state on the invoice to the customer the specific amount of taxes collected.

(b) An accommodations intermediary shall report to the accommodations provider the room charge and remit to the accommodations provider the discount room charge and the tax collected on the room charge.

(c) An accommodations provider shall collect and remit to the [state or local tax agency] the tax imposed on the room charge.

(d) The room charge that is part of a travel package may be determined by the accommodations intermediary by reasonable and verifiable standards from the accommodation intermediary's books and records that are kept in the regular course of business including, but not limited to, non-tax purposes.

3. Safe Harbor—

~~(a) No assessment shall be made against an accommodations intermediary on the basis of an incorrect remittance of tax on the room charge if the tax rate applied to the room charge by an accommodations intermediary in collecting and remitting such tax is identical to the rate applied to the discount room charge by the accommodations provider.~~

(a) No assessment shall be made against an accommodations provider on the basis of an incorrect remittance of tax on the accommodations fee by an unrelated accommodations intermediary.

(b) No assessment shall be made against an accommodations provider for any of the amount of tax due related to the accommodation intermediary's accommodations fee (the difference between the full room charge and the discounted room charge) that is neither collected by the accommodation intermediary nor provided to the accommodation provider from the accommodation intermediary. Assessment for unpaid tax associated with the intermediary's accommodations fee may only be pursued against an accommodations intermediary and not against the accommodations provider. If the accommodations intermediary provides sufficient evidence that such tax was properly remitted to accommodations provider to be reported and paid, such jurisdiction may then have the right to pursue the accommodations provider for such unpaid taxes.

4. Tax Liability of Purchaser.—

Nothing in this Act shall affect the liability for a tax that a purchaser of accommodations might otherwise have under law.

Optional:

Example:

Accommodations Provider (Provider) furnishes a one night accommodation to a guest who booked the accommodations through Accommodations Intermediary (Intermediary). The Provider bills the Intermediary for a discount room charge of \$80.00. The price at which the Intermediary facilitates the sale of a one-night accommodations to the customer is \$100.00, which includes a \$20.00 accommodations fee. The 5% tax applied to the discount room charge is \$4.00 and applied to the accommodation fee is \$1.00. The total price charged to the customer, including tax, is \$105.00, which is the sum of the discount room charge, the accommodations fee and the \$5.00 tax (\$100 room charge + [5% tax rate x \$100.00 room charge] = \$105.00 price to customer).

Intermediary remits \$5.00 tax (5% tax rate x \$80.00 discount room charge + \$1.00 tax (5% tax rate x \$20.00 accommodations fee) to the Provider. Provider remits the \$5.00 tax to the [state or local tax agency].

\$80.00		Discount room charge
\$20.00		Accommodations fee
	\$100.00	Room charge
\$4.00		Tax on discount room charge remitted by intermediary to Provider = (5% x \$80.00)
\$1.00		Tax on accommodations fee remitted by intermediary to Provider = (5% x \$20.00)
	\$5.00	Total tax on room charge remitted by Provider to

		[state or local tax agency]
\$105.00		Price to customer including tax charged by Provider and Intermediary

Dual Remittance

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(a) “Accommodation” means a hotel room, a motel room, a residence, a cottage or similar transient lodging facility for occupancy for [less than thirty days ^{***alternative language***} thirty days or less.]

(b) “Accommodations provider” means any person or entity that furnishes accommodations for periods of [less than thirty days ^{***alternative language***} thirty days or less] to the general public for compensation. The term “furnishes” includes the sale of use or possession, or the sale of the right to use or possess.

(b) “Accommodations provider” means any person or entity that owns, operates or manages accommodations, and makes them available for sale, use or possession to the general public for compensation.

(c) “Accommodations intermediary” means any person or entity, other than an accommodations provider, that facilitates the sale of an accommodation and charges a room charge to the customer. For purposes of this definition, the term “facilitates the sale” includes brokering, coordinating, or in any other way arranging for the purchase of, or the right to use accommodations by a customer.

(c) “Accommodations intermediary” means any person or entity, other than an accommodations provider, that facilitates the sale, use or possession of an accommodation, and charges a room charge to the general public. For purposes of this definition, the term “facilitates the sale, use or possession” means brokering, coordinating or in any other way arranging for the purchase of the sale, use or possession of accommodations by the general public.

(d) “Accommodations fee” means the room charge less the discount room charge, if any, provided that for purposes of this Act the accommodations fee shall not be less than zero.

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(h)-A “travel package” consists of accommodations bundled with two or more separate components such as air transportation, car rental or similar items and charged to the customer for a single retail price.

2. Collection and Remittance.—

(a) An accommodations intermediary shall be responsible for the collection of tax imposed by [cite to applicable code section(s)] on the room charge and shall be required to separately state on the invoice to the customer the specific amount of taxes collected.

(b) An accommodations intermediary shall remit to the accommodations provider the tax collected on the discount room charge.

(c) An accommodations intermediary shall remit to the [state or local tax agency] the tax collected on the accommodations fee.

(d) An accommodations provider shall collect and remit to the [state or local tax agency] the tax imposed on the discount room charge.

(e) The room charge that is part of a travel package may be determined by the accommodations intermediary by reasonable and verifiable standards from the accommodations intermediary's books and records that are kept in the regular course of business including, but not limited to, non-tax purposes.

3. Safe Harbor.—

(a) No assessment shall be made against an accommodations intermediary on the basis of an incorrect remittance of tax on the room charge if the tax rate applied to the room charge by an accommodations intermediary in collecting and remitting such tax is identical to the rate applied to the discount room charge by the accommodations provider.

(b) No assessment shall be made against an accommodations provider on the basis of an incorrect remittance of tax on the accommodations fee by an unrelated accommodations intermediary.

(c) No assessment shall be made against an accommodations provider for any of the amount of tax due related to the accommodation intermediary's accommodations fee (the difference between the full room charge and the discounted room charge) that is neither collected by the accommodation intermediary nor provided to the accommodation provider from the accommodation intermediary. Assessment for unpaid tax associated with the intermediary's accommodations fee may only be pursued against an accommodations intermediary and not against the accommodations provider. If the accommodations intermediary provides sufficient evidence that such tax was properly remitted to accommodations provider to be reported and paid, such jurisdiction may then have the right to pursue the accommodations provider for such unpaid taxes.

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price at which the Intermediary facilitates the sale of a one-night accommodation to the customer is \$100.00, which includes a \$20.00 accommodations fee. The Provider bills the Intermediary for a discount room charge of \$80.00. The 5% tax applied to the discount room charge is \$4.00 and applied to the accommodation fee is \$1.00. The total price charged to the customer, including tax, is \$105.00, which is the sum of the discount room charge, the accommodations fee and the \$5.00 tax (\$100 room charge + [5% tax rate x \$100.00 room charge] = \$105.00 price to customer).

Intermediary remits \$4.00 tax (5% tax rate x \$80.00 discount room charge) to the Provider and a \$1.00 tax (5% tax rate x \$20.00 accommodations fee) to [the state or local tax agency]. Provider remits the \$4.00 tax to the [state or local tax agency].

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\$20.00		Accommodations fee
	\$100.00	Room charge
\$4.00		Tax on discount room charge remitted by intermediary to provider, and by provider to [state or local government] = (5% x \$80.00)
\$1.00		Tax on accommodations fee remitted by intermediary to [state or local government] = (5% x \$20.00)
	\$5.00	Total tax on room charge
\$105.00		Price to customer including tax charged by Provider and Intermediary